



STATE OF DELAWARE


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October 24, 2017

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Shona Marshall, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE APPLICATION OF STREAM ENERGY DELAWARE, LLC D/B/A STREAM AND STREAM ENERGY FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (SUBMITTED MAY 23, 2017; FILED SEPTEMBER 21, 2017) - PSC DOCKET No. 17-0340

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Background

On May 23, 2017 Stream Energy Delaware, LLC D/B/A Stream and Stream Energy (the "Company" or "Stream") submitted an application (the "Application") with the Delaware Public Service Commission (the "Commission") for an Electric Supplier Certificate ("ESC") to provide electric supply services in the State of Delaware pursuant to § 1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §§ 1001-1020 (the "Act"), and 26 *Del. Admin. C.* § 3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").<sup>1</sup>

Application

The Company's original filing was submitted on May 23, 2017, but the submitted Application did not meet the minimum filing requirements (MFR's). In a letter dated July 20, 2017, Staff requested the Company confirm the trade name under which the Company intends to operate in the state of Delaware. The Company filed fictitious name certificates for both Stream and Stream Energy. Staff requested clarification regarding the leadership of the Stream Energy Delaware, LLC and those members responsible for Delaware operations. Staff also requested a sample residential customer contract, information regarding internal audit procedures for the "change management process" implemented in response to customer complaints, an update on a Writ of Certiorari submitted April 28, 2017 for *Torres v. SGE Management*, affidavits of publication for public notices published in two newspapers having general circulation throughout the state of Delaware, and a statement of verification signed by an officer of the Company. Stream's submitted a response to Staff's inquiry in documents dated August 21, 2017. The response did not include a residential customer contract. Staff submitted a second letter of deficiency dated September 12, 2017 acknowledging the Company's response to Staff's initial request and informing the Company of the MFRs for electric supplier certifications. In an email dated

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<sup>1</sup> Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

September 15, 2017, the Company asked for clarification regarding Staff's request for a sample residential contract. Staff provided clarification of the requirement pursuant to the Supplier Rules in an email dated September 20, 2017 and again on September 21, 2017. The Company submitted a response dated September 21, 2017 that satisfies the MFRs for this Application.

## **Review and Analysis**

### **Authority to do Business in Delaware**

The Company is a limited liability company formed under the laws of the state of Delaware. The Company provided a certificate of good standing for the State of Delaware issued May 10, 2017. The Company also provided a Delaware business license issued August 1, 2017 that is valid until December 31, 2019.

### **Resident Agent**

The Company supplied the contact information for a Delaware Registered Agent listed in the application as The Corporation Trust Company located at 1209 Orange Street, Wilmington, DE 19801.

### **Compliance with Regional Requirements**

The Company provided proof of PJM membership. The Company also provided a copy of the FERC approval as a marketer. The Company states that its affiliates currently operate in regulated wholesale energy markets including PJM, ERCOT, and NYISO and possess extensive experience procuring wholesale power to support the demand of retail energy customers. The Company contends that it has the technical ability to secure generation and deliver electricity through compliance with PJM's requirements and has been doing so since 2010 in various jurisdictions.

## **Financial, Operational, Managerial and Technical Ability**

The Company provided independently audited copies of the Consolidated Balance Sheet, Consolidated Statement of Income, Consolidated Statement of Cash Flows, and Consolidated Changes in Partner's Equity Statement for Stream Gas & Electric, LTD, the parent company, as indicia of financial capability under Section 2.2.16.1 of the Supplier Rules. The confidential financial statements are provided as evidence of the Applicant's ability to provide electric supply services in the State of Delaware.

The Company anticipates serving Residential, Commercial, and Industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Company's application states that it is presently selling electric supply services in Texas, Pennsylvania, Maryland, New Jersey, New York, and the District of Columbia. The Company has been approved to sell electric and natural gas services in Illinois, Connecticut, and Ohio but has not begun providing services in these states as of the submission of the Company's Application. The Company was pending licensure to provide natural gas services in the state of Massachusetts as of the Application's submission date. The Company received Massachusetts certification in a letter dated May 30, 2017 and submitted the documentation as a supplemental filing to the Application. The Company is a subsidiary of Stream Gas & Electric, LTD. The Company's listed affiliates include: Stream Energy Maryland, LLC, Stream Energy New Jersey, LLC, Stream Energy New York, LLC, Stream Energy Columbia, LLC, Stream Georgia Gas SPE, LLC, and Stream Energy Pennsylvania, LLC.

During Staff's review of the Company's practices, Staff discovered investigations conducted in multiple jurisdictions related to sales and the marketing practices of various affiliates of Stream and also allegations of violations of racketeering laws. The investigations alleged practices of deceptive pricing false advertising and price gouging in relation to customer complaints. Investigations into racketeering laws allege engagement in a pyramid scheme sales business model. In Exhibit 23, Stream provided summaries on state jurisdictional violations as a supplement to its application for states of Texas and

Georgia. Stream provided an explanation for three matters, the resolution/settlement reached, and details of a subsequently implemented “change management process” that the Company ensures will prevent the violations from occurring in the state of Delaware. In a letter dated July 20, 2017, Staff submitted inquiries regarding the audit function of the “change management process.” The Company’s response dated August 21, 2017 stated that Stream conducts audits annually and in the last 12 months, 21 tickets had been submitted. The Company provided explanations for the tickets including one in which the system identified an issue before documents were distributed to customers.

In Exhibit 28, the Company provided formal complaint proceedings and resolutions for the states of Texas and Pennsylvania, informal complaint and inquiry summaries for various jurisdictions in which it operated from 2012-2017, and a summary of “other litigation” involving affiliates of Stream. In the state of Texas, the Public Utility Commission of Texas (“PUCT”) conducted an audit of the System Benefit Fund for all retail electric suppliers and found that nine customers of Stream’s Texas affiliate had not been given a full discount of the 65 customers of the affiliate that were identified in the sample. The affiliate made a payment in the amount of \$1,469.95 to cover the difference. In 2008, the Governor’s Office of Consumer Affairs (“OCA”) issued an investigation demand regarding Stream’s Georgia affiliate’s compliance with Georgia Fair Business Practices Act. The affiliate proposed a letter of understanding to resolve any and all concerns that included changes to the affiliate’s operations. The OCA agreed to the changes and no enforcement action was brought against the affiliate. In 2011, Georgia’s OCA issued an investigation demand regarding Stream’s Georgia affiliate’s compliance with Georgia Fair Business Practices Act. The affiliate provided all requested documentation but never received a response from the OCA, despite inquiries made by the affiliate. In 2011, the U.S. Securities and Exchange Commission (“SEC”) asked the parent company, Stream Gas & Electric Ltd., to provide voluntary information regarding its status as a security subject to SEC compliance. In a letter dated, September 12, 2012, the SEC stated that no enforcement action would be taken against Stream’s parent company. Also in 2011, during the PUCT compliance review of the Company’s business practices and customer protection rules and statute, the PUCT Oversight and Enforcement Division revealed that Stream’s Texas affiliate was not in compliance with several provisions of the Commission’s customer protection rules for retail electric service. The affiliate was informed on October 18, 2010 and provided its full cooperation to the staff of the PUCT. Stream Energy acknowledged the PUCT’s list of violations, participated in settlement discussions, and corrected the violations prior to the settlement of the matter. On August 23, 2011, the PUCT and the affiliate agreed to an administrative penalty of \$74,000.

Stream affiliates currently are defendants in three open cases: *Torres v. SGE Management*; *Basile v. Stream Energy PA, LLC*; and *Jernard Gridds v. SGE Management, LLC*, detailed below:

#### **Torres v. SGE Management, LLC**

Juan Ramon Torres filed a federal lawsuit in the Texas Southern District Court against SGE Management, LLC (“SGE”), Ignite, the marketing arm of Stream Electric. The complaint alleges that the defendants operated and maintained a pyramid and endless chain scheme using mail and wire fraud as in violation of Racketeer Influenced and Corrupt Organizations Act (“RICO”). The plaintiffs allege that the compensation plan only benefits the top level associates and rarely do associates recoup the investment needed to participate, however, regular sales recruitment meetings take place where associates are promised great wealth in SGE’s multi-level marketing program. The number of plaintiffs in this case grew to 240,000 and the case was granted class action status in 2014. In 2015, three judge panel in the Fifth Circuit Court of Appeals de-certified the class in a 2:1 decision. In 2016, the same court ruled in an *en banc*<sup>22</sup> decision that included all 16 judges of the court, that the case proceed as a class action suit and reduced the number of plaintiffs from 240,000 to 160,000 due to arbitrary clauses in the contract of 80,000 associates. A Writ of Certiorari was filed April 28, 2017 with the U.S. Supreme Court

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<sup>22</sup> A session in which a case is heard before all judges of the court rather than a panel of selected judges.

to appeal the Fifth Circuit court's decision. In response to Staff's inquiry dated July 20, 2017, the Company has stated that no further rulings have been made. This case is currently ongoing.

**Basile v. Stream Energy PA, LLC, Case Number 2:15-CV-03204**

This case was filed by Steven Basile on June 9, 2015 and is an ongoing class action suit in the United States District Court for the Eastern District of Pennsylvania. The complaint alleges the Company's affiliate promises customers competitive market-based rates and savings on their electric energy bills upon switching from their local utility or other third party energy supplier. The complaint describes a process in which the affiliate offers a "teaser" fixed rate product for a period not defined in the Disclosure Statement for Residential and Small Business Electric Service or the Welcome Letter provided to customers. According to the complaint, the language of these two documents promise competitive prices based on specific parameters but customers who switch may pay up to 50% more for energy services. The plaintiff alleged that the price actually charged to customers was exorbitant, not competitive, not linked to any market factors, and did not provide savings. The complaint also included the documents mentioned. This case is currently ongoing.

**Griggs v. SGE Management, LLC,**

This case was filed by Jernard Griggs on May 18, 2015 and also alleges that SGE operated and maintained a pyramid scheme in violation of RICO. The counsel who initiated the *Torres* case also filed this case. On November 4, 2015, the district court granted the Defendants' motion to compel arbitration and stayed the case pending arbitration. This case is currently open, but a claim has not been filed by plaintiff's counsel as of the date Stream's Application was submitted.

**Leadership**

A supplemental filing to the Application included a summary of the principal officers of the Company. Lawrence Mondry is the President and Chief Operating Officer of the Company. He has over 30 years of managerial experience and year of experience in the energy industry. Pierre Koshakji is the Vice President and has held a position with Stream since 2004. Renee Hornbaker, CPA, is the Treasurer and has over 40 years of managerial experience. She has six years of experience in the energy industry. Daniel Terrell is the Chief Legal Officer and Secretary of Stream Gas & Electric, Ltd., and has held this position since May of 2016. He has been in the legal field for 14 years. Other personnel responsible for Delaware operations include: Brian Berend, Senior VP of Wholesale Power; Darrin Pfannenstiel, Sr., VP and Associate General Counsel; Dawn Wentworth, Director of Marketing; James Hall, Director of Energy; and Jacob Hadix, III, Energy Risk and Management Consultant.

**Surety Bond**

The Company did provide documentation of its surety bond as a confidential supplement to its Application dated May 23, 2017.

**Verification of Application**

The original Application contained a signed sworn verification of application with the signature of Daniel Terrell, Secretary. Subsequent filings to the Application have also been verified by Daniel Terrell.

**Consent to Jurisdiction**

The Company consents to the jurisdiction of the Delaware courts.

**Contracts**

The Company provided a sample contract for Residential and Small Commercial Retail Electric Customers to provide Electric Supply Service.

#### Statement of Criminal Activity

The Applicant stated that it has not been charged or convicted of any criminal activity, nor has any of its principals or corporation offices. An internet review of the Company and its principal did not return any incidents of criminal activity.

#### Public Notice

The Company was advised that pursuant to Section 2.2 of the Supplier Rules, the Company is required to publish notice of its filing in two general circulation newspapers within the state of Delaware. The Company provided the appropriate affidavits of publication from each publication. Notice was published in the Delaware State News on August 18, 2017, and the News Journal on August 13, 2017. There were no interventions, protests, or comments filed in the docket within the 20-day notice period.

#### Legal Review

Staff submitted this Memo for its counsel's review on October 23, 2017.

#### Staff Recommendation

Based on Staff's review and analysis of the Application, the Company has satisfied the managerial and technical ability requirements of the Act and the Supplier Rules. Staff's review of the Application, supplemental documentation, research of operations in other jurisdictions, and ongoing cases presents a significant barrier to substantial evidence of financial and operational ability to provide electric supply services in Delaware. Ongoing litigation costs, as well as the potential settlement and/or conclusion of three current federal cases, are significant expenses of the parent company and have a potential to impact Delaware consumers in a financial and operational capacity. Although the Company has provided a surety bond to cover obligations up to a specified amount, the potential impact on Delaware customers cannot be quantified at this time and could extend beyond a financial capacity. The operational impact to customers of Stream Energy Delaware, LLC also cannot be identified at this time. The Company has been very timely in response to Staff's inquiries and provided a large amount of supplemental data to support its Application. Therefore, Staff recommends that the Commission approve this Application under the condition that the Company submits summary updates on all subsequent filings, motions, and decisions in the three open cases of its affiliates so that the Commission may be aware of any impending impacts to Delaware consumers.